Bituminous Roadways of Colorado *and* International Brotherhood of Teamsters, Local 13, AFL–CIO. Case 27–CA–12224

August 31, 1994

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND DEVANEY

On July 27, 1993, Administrative Law Judge William L. Schmidt issued the attached decision. The Respondent filed exceptions and a supporting brief and the General Counsel filed a brief answering the Respondent's exceptions and supporting the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Bituminous Roadways of Colorado, Lakewood, Colorado, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In adopting the judge's conclusion that the Respondent violated Sec. 8(a)(5) and (1) of the Act by unilaterally discontinuing the dental and vision care insurance coverage, we rely specifically on his finding that the Respondent announced the termination to the Union and the employees in such a confusing way that the Union could reasonably have concluded it was a fait accompli, with no basis for bargaining. Therefore, the Union could not be said to have waived, by inaction, any opportunity to bargain. In view of that finding, we find it unnecessary to pass on the judge's additional reasoning that the Respondent's refusal to pay for such coverage after CCT discontinued it as part of the basic plan was tantamount to abrogating a statutory duty to maintain the status quo.

William J. Daly and *Diane J. Munkel, Esqs.*, for the General Counsel.
John L. Reiter, Esq., Mountain States Employers' Council, Inc., of Denver, Colorado, for the Respondent.
Frank L. Frauenfeld, Teamsters Joint Council No. 3, of Denver, Colorado, for the Charging Party.

DECISION

STATEMENT OF THE CASE

WILLIAM L. SCHMIDT, Administrative Law Judge. Here, the General Counsel of the National Labor Relations Board (NLRB or Board) alleges that Bituminous Roadways of Colorado (Respondent or Company) violated Section 8(a)(1) and (5) of the National Labor Relations Act (Act) by: (1) unilaterally changing insurance coverage for represented employees on or about January 15, 1992;[1] (2) unilaterally granting pay increases to the same employees on or about April 2; and (3) refusing to provide wage rate information requested on or about April 17.

The International Brotherhood of Teamsters, Local 13, AFL–CIO (Union)[2] initiated this proceeding by filing an unfair labor practice charge on May 28.[3] Thereafter, the Regional Director for Region 27, acting on behalf of the General Counsel, issued a complaint and notice of hearing on July 22. Respondent timely answered the complaint on July 29 denying that it engaged in the unfair labor practices alleged.

I heard this case on February 25, 1993, at Denver, Colorado. Having now carefully considered the record, the demeanor of the witnesses while testifying, and the parties' posthearing briefs, I conclude that Respondent violated the Act as alleged based on the following

FINDINGS OF FACT

THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

Respondent, a corporation with an office and place of business in Lakewood, Colorado, is engaged in the asphalt paving business.[4] Its operations are seasonal lasting generally from the beginning of April to about mid-December. During this seasonal period, Respondent employs about 110 to 130 employees, including approximately 70 workers engaged in construction operations. Typically, 8 to 15 of Respondent's construction workers are drivers and fuelers who have been represented by the Union since its certification on July 18 following a Board-conducted election. From time to time it also employs a large number of independent contractors who haul asphalt.

Negotiations for a collective-bargaining agreement covering the drivers and fuelers commenced on September 19. Between that date and the final session on January 28, 1993, the parties held eight additional sessions in an unsuccessful effort to conclude an agreement.[5] William Lauer, the Company's vice president and operations manager, and Kermit

[1] All dates are in the 1992 calendar year unless otherwise indicated.

[2] The name of the Charging Party has been changed to reflect its new name.

[3] The charge was amended on July 17.

[4] Respondent's direct inflow annually exceeds the dollar volume established by the Board for exercising its statutory jurisdiction over nonretail enterprises. Accordingly, the exercise of the Board's jurisdiction here is appropriate.

[5] The other sessions were held on October 29, November 12 and 25, and December 17, 1991, and February 3 and 20, April 17, and May 22, 1992.

Darkey, president of the Mountain States Employers' Council, represented Respondent at all the bargaining sessions. Union President Jack Parker represented the Union at all sessions. Frank Frauenfeld, an organizer for Teamsters District Council No. 3, assisted Parker at most of the sessions. Drivers Ed Schweers and Sally Campbell were present at two critical sessions on February 3 and 20.

This case relates to changes made in Respondent's health benefits plan in early 1992 and the wage increases Respondent granted to the unit employees on April 3, at the start of the 1992 season.

B. *1992 Changes in Respondent's Health Benefit Program*

Since April 1991, Respondent has provided its hourly paid employees with a health benefit plan that it purchases from the Colorado Contractors' Trust (CCT). In addition to standard medical benefits, the plan included an added dental and vision benefit program (DV benefits) as well as an ''hour bank'' feature designed to provide insurance coverage during the off-season. Apart from the drivers and fuelers involved here, none of Respondent's employees covered under the CCT health plan are represented.

Early in the negotiations, the parties discussed the maintenance of health benefits by the Company. According to Parker, the Company agreed to maintain the existing health benefits for a year. Darkey disputes that claim; he testified that the Company only agreed to maintain the existing health benefit plan until its renewal date. When the Union presented its economic proposals later, it sought to have the unit employees covered under the Teamsters health and welfare program. The company negotiators repeatedly rejected that proposal in the early meetings. The Company's written proposal, submitted during one of the 1991 sessions, provided for the continuation of the CCT plan for the unit employees. Notwithstanding, no one claims that the parties had reached an impasse over the health benefit issue.

By separate notices dated January 21, 1992, CCT notified both the participating employers and employees that it planned changes in its health plan. In its letter to the participating employers, CCT said that, following a review of its 1991 operations, ''we resolved to modify benefits as well as adjust the monthly rates to spread the increased costs to both the employer and the employee.'' Among other changes, CCT notified the participating employers that the premium cost would increase by 10 cents per hour worked by each employee. Attached to the notice was a description of the modifications that were to become effective March 1. The notice called specific attention to the fact ''*that dental and vision benefits for Plan B (hourly) employees are terminated effective January 31, 1992*'' but stated that the employer could make arrangements for ''either or both coverages'' through The Segal Company.

The notification sent to employees called attention to changes in the deductible amounts, copayment requirements, coinsurance provisions, and the mental health and substance abuse benefits. More importantly, CCT notified employees that there would be a ''moratorium'' on the dental and vision benefits effective February 1, 1992. The notice explained that dental and vision procedures preauthorized prior to January 14 would be paid for if completed during the authorization period but otherwise ''*only those dental and vision services completed by January 31, 1992, will be considered eligible.*'' (Emphasis in the original.)

On January 29, CCT sent another notice to the participating employers dealing with ''the recent notification to eliminate dental and vision benefits.'' In this notice, CCT stated that it was ''agreeable to offering dental and vision coverage on a Company-selected basis.'' The notice continues by specifying the conditions under which dental and vision benefits would be available in the future months. The salient requirements included: (1) DV benefits would not be available separately; (2) employers selecting DV coverage had to agree to participate for a minimum period of 2 years; (3) an added premium of 20 cents per hour was required for all hourly employees beginning March 1; (4) coverage could not be selected individually by employees; (5) DV rates for future years were subject to increases; (6) benefits would begin ''again'' on May 1 for employees of employers who began contributions on March 1; (7) employers desiring coverage as of March 1 were required to pay $75 per employee shown on the Employer's January reporting form as well as the 20 cents per hour; and (8) employees eligible for March and April coverage under CCT's ''hour bank'' provision would be eligible for coverage under the ''Prepayment Provision.'' The notice concludes with a recitation of complicated rules applicable to employees who change employers.

At the beginning of the February 3 bargaining session, Lauer informed the union negotiators that CCT planned to make changes in the health plan. Admittedly, Lauer did not have the notices described above with him at the session.[6] According to Parker, Lauer said that CCT planned to terminate the DV benefits, increase the deductible, and make other changes effective April 1. Lauer also told the union committee that if the Company wanted to keep the basic CCT health plan, the per-employee premium would increase by 10 cents per hour and that the DV benefits would cost an additional 20 cents per hour.

When Parker asked if the Company intended to keep the CCT plan, Lauer said they did but when he asked if the Company planned to pay for the now separate DV benefits, Lauer said, ''No, definitely not.'' This response led Parker to ask, in effect, how the Company squared that response with its assurance early in the negotiations that it would maintain benefits for at least a year. Lauer disputed Parker's claim that such an assurance had been given; instead, Lauer asserted that the Company had only agreed to maintain the plan at the existing rate and that it had never agreed to maintain benefits. At approximately this point in the exchange, one of the employees present asked to caucus with the union negotiators and a brief break followed.

During the caucus, Schweers and Campbell told Parker about the notices they had received from CCT and reported

[6] Lauer was uncertain as to when he received the CCT notices. At first, he seemed to suggest that he had not received the notices before the February 3 meeting. Later, however, he alluded to a telephone call he made to the trust administrator after receiving the first CCT notice during which he was informed that the January 29 notice would be forthcoming. As Respondent's version of the bargaining session exchanges involving the health benefits matter revolve around this professed lack of information at the February 3 meeting which I find to be unreliable, I have credited Parker's account of what occurred. I further note that Parker's account appears to conform in general to Darkey's notes taken at the February 3 session.

that the dental and vision care had already ceased.[7] After returning to the bargaining table and questioning the company negotiators concerning the effective date of the changes, Parker then reported the information provided by the employees during the caucus. Campbell confirmed that CCT's notice to employees stated that the DV benefits had already been eliminated and that the health plan deductible would be increased. The company negotiators promised to check into that claim and report back at the next session.

Sometime prior to the February 20 session, both Schweers and Darkey furnished Parker with a copy of CCT's January 21 notice to employees. Never having been privy to the employer notices from CCT, Parker concluded that the continuance of the DV benefits was a ''done deal'' because Respondent refused to pay the 20 cents per hour to maintain that benefit. Consequently, Parker did not revisit the DV benefit issue on February 20.

C. *The 1992 Pay Increase*

Respondent had no pattern or practice concerning peroidic wage adjustments for the drivers and fuel men. Thus, Lauer said very few wage adjustments were made in either 1990 or 1991. Before that, the wage adjustment pattern followed the prior owner's whim. Parker asserted that the Union had information indicating that some employees had not received increases in 5 years; Lauer stated that some inequities existed in the unit employees pay rates.

At the December 17, 1991 bargaining session, the company negotiators rejected the Union's economic proposal made at the previous session. At the same time, however, Lauer told the union representatives that Respondent was reviewing its wage structure with an eye toward granting increases around April 1—the start of the new season—in order to remain competitive.

At the February 3 session, Parker inquired about the previously mentioned wage review. Lauer reported that the review was not yet finished. During the ensuing discussion, Lauer told Parker that the wage adjustment criteria included the employee's work ethic, attendance record, and production.

At the February 20 session, Parker inquired again about the progress with the wage review. According to Parker, Lauer responded that ''they had pretty well come to a conclusion that they would like to put in a 50-cents-per-hour increase . . . on approximately April 1.'' Lauer recalled that he told Parker at this meeting that the Company would increase wages ''[p]robably somewhere around 50 cents an hour.'' However, Lauer said that was before they had completed their evaluation of everyone.

Following Lauer's response, Parker said that he turned to Darkey and asked if that was a proposal. Everyone agrees that Darkey responded ''I wouldn't have a problem making it one.'' This response, Parker said, led him to believe that he would likely receive a written wage increase proposal. Parker said that in his 15 years of experience in bargaining with Darkey, the latter always put wage proposals in writing, ''usually in hand-written form.'' Darkey essentially concurred that this had long been his approach in discussing whether or not one exhibit (G.C. Exh. 5) amounted to a proposal or was merely information. However, Darkey proffered no written wage proposal at the February 20 meeting.

Shortly after the start of the April 17 bargaining session, Darkey handed Parker a document containing the names of seven unit employees and the changes made in their hourly wage rates effective April 3. This list reflects pay increases ranging from 25 cents per hour to $1.50 per hour.[8] These specific increases had never been proposed before their implementation nor had any agreement ever been reached on increases of any kind.

Parker angrily accused Respondent's negotiators of not bargaining in good faith and ''treating us like we weren't there.'' In a private caucus, Parker told Darkey and Attorney Reiter who was at that meeting that he probably would be forced to file an unfair labor practice charge. Darkey responded that although the Company had ''done it,'' he would ''take the blame.''

When the negotiators returned to the bargaining table, Parker continued his protest. At this time, Darkey asked if the Union wanted the Company to roll the increases back. Not surprisingly, Parker declined that proposal. Subsequently, Parker noted that the list provided did not contain the names of all unit employees who had worked in the prior year. After Darkey and Lauer conferred privately, they agreed that the list was incomplete and told Parker that they would furnish with a complete list. Parker asked to have it faxed to him.

As Parker had not received the revised list by the next bargaining session on May 22, he asked the company negotiators for it at the table. They told him that they forgot to bring it with them. Subsequently, the revised list of wage increases was faxed to Parker on June 2. This list shows the wage rates for 13 unit employees as of June 1, including 6 of the employees shown on the list provided to the Union on April 17. Of those six employees shown on both lists, either five received further increases by the time the June 2 list was prepared, or the wage rates shown for them on the April 17 list were inaccurate. Assuming the latter is true but the pre-increase hourly rates shown on April 17 list are accurate, then the original increases on April 3 ranged from 50 cents per hour to $2 per hour. Regardless, no evidence shows that the parties discussed or agreed upon additional increases at or after the April 17 session.[9] However, at the May 22 session, the Company did present its proposal for minimum or beginning wage rates. No agreement was reached concerning this proposal.

Darkey, in effect, testified that as the Union had long been on notice that the Company contemplated a pay increase around April 1 and as Respondent had discussed a potential 50-cent-per-hour increase at least at the February 20 meeting without receiving any objection or protest from the Union,

[7] Apparently, the employees believed that other changes had already occurred but neither employee had a copy of the CCT notice to confirm their assertions.

[8] More specifically, this document (G.C. Exh. 5) reflects that one employee was increased 25 cents per hour, four employees were increased 50 cents per hour, one employee was increased $1.25 per hour, and one employee was increased $1.50 per hour.

[9] In his testimony, Lauer conceded that the new rates shown on the document furnished to the Union on April 17 are inaccurate. However, as he also testified that pay increases were granted in April and May, it is unclear whether they were inaccurate when given to the Union at the April 17 session.

he believed that the Company was justified with implementing increases of any amount over 50 cents per hour.

D. *Further Findings and Conclusions*

Section 8(a)(5) requires an employer ''to bargain collectively with the representatives of his employees.'' According to Section 8(d), the term ''bargain collectively'' means, inter alia, ''the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment.''

An employer violates the duty to bargain by changing the terms and conditions of employment, including increasing pay rates by amounts within its discretion or altering medical insurance benefits, applicable to represented employees absent agreement with, or a waiver by, the employee bargaining representative, or an impasse in negotiations.[10] The resolution of the primary issues presented here lies within the framework of these legal principles.

1. The insurance changes

General Counsel argues that Respondent had a duty to maintain the specific terms of the employee health insurance plan rather than merely *an* insurance plan. Where, as here, Respondent had ''at least two options for continuing the [DV benefits],'' General Counsel contends that Respondent failed to present those options to the Union ''in such a way as to allow meaningful negotiations.''[11] Instead, the General Counsel claims, Respondent presented the CCT-initiated changes to the Union in such a manner as to lead to the reasonable conclusion that they were a fait accompli. In these circumstances, the General Counsel in effect argues, no waiver of the right to bargain on the Union's part can be inferred.

Respondent contends that the Union was aware that DV benefits were discontinued as of February 1 and, after ascertaining that Respondent would not agree to pay for adding separate DV benefits, it ''abandoned any efforts at further negotiations that might result in the availability of that coverage for the employees it represented.'' Here, Respondent argues, the Union was obliged to diligently pursue bargaining about the DV benefits and its ''efforts fall far short of [the required] diligence.''

Prior to February 1, Respondent provided DV benefits on a noncontributory basis to its employees. The Board's decision in the *Intermountain Rural Electric* case, supra at 785, clearly establishes this central feature as the status quo circumstance, or the ''term or condition of employment'' that must be maintained until new terms are negotiated or an impasse is reached in negotiations. Everything else aside, plainly no agreement was reached with the Union to discontinue DV benefits for the unit employees nor does this record support a conclusion that an impasse existed at the time the DV benefits were discontinued. Instead, I find Respondent effectively discontinued the existing DV benefits by refusing to pay the increased premium sought by CCT.

By contending that the Union failed to diligently pursue bargaining after it announced that it would no longer pay for DV benefits, Respondent exposes its misperception about its statutory duty to maintain the status quo. After CCT announced the new terms for continuing DV benefits under its program, Respondent fundamentally faced a choice of either paying the increased premium cost, negotiating with the Union about securing DV benefits for the unit employees from another source, or negotiating the discontinuance of this benefit for the unit employees in order to satisfy its statutory obligations.

To the extent that Respondent's announcement on February 3 that it would not pay the added premium cost for DV benefits can be construed as a proposal by Respondent to discontinue the DV benefits, I find, in agreement with the General Counsel, that Respondent failed to present that proposal in a manner designed to elicit meaningful negotiations. Hence, the evidence here shows that the February 3 session became bogged down in confusion about the true state of affairs. On the one hand, CCT had notified employees that the DV benefits were discontinued as of February 1 but later notified the participating employers of an option to continue those benefits. Respondent's negotiators agreed to clear up this confusion for Parker but, by subsequently providing him only with the CCT notice sent to employees, they in fact reinforced the notion advanced at the February 3 session that the DV benefits already had been discontinued and led him to believe that the matter was a ''done deal.'' In these circumstances, I cannot conclude that the Union ever waived its right to bargain over the discontinuance of the DV benefits.

More importantly, in the context of the parties' negotiations for a complete collective-bargaining agreement, Respondent's refusal to pay the increased DV benefit premium without the union acquiescence is tantamount to abrogating its statutory duty to maintain the status quo. On this point the following summary by the Board in *Intermountain Rural Electric* is both instructive and dispositive of this issue:

> It is important first to set forth the rights of parties in a collective-bargaining relationship. In a nonnegotiation setting, it is incumbent upon a union to request bargaining when it receives sufficient notice to permit meaningful bargaining over an employer's proposal to change terms or conditions of employment. If a union fails to act diligently in seeking bargaining, it may be found to have waived its right and it is not unlawful for an employer to implement the change unilaterally. What period of time is found sufficient for a union to request bargaining will depend upon the facts of each case.
>
> When parties are engaged in negotiations for a collective-bargaining agreement, however, their obligations are somewhat different. Because the parties are in fact bargaining on various proposals, there is no need for additional requests for bargaining on those proposals. During negotiations, a union must clearly intend, ex-

[10] *NLRB v. Katz*, 369 U.S. 736 (1962); *NLRB v. Borg-Warner Corp*., 356 U.S. 342 (1958); *Intermountain Rural Electric Assn*., 305 NLRB 783 (1991), enfd. 984 F.2d 1562 (10th Cir. 1993), in which the Board discusses the waiver concept at some length; and *Goodman Holding Co*., 276 NLRB 935 (1985), and the cases cited therein concerning discretionary pay increases.

[11] In its brief, the General Counsel makes no contention that other CCT-initiated changes in the basic health plan—such as increased deductibles and copayments—are unlawful. As no showing was made that Respondent played any part in CCT's actions or possessed authority to alter these other changes, the conclusion ultimately reached here applies only to the elimination of the DV benefits.

> press, and manifest a conscious relinquishment of its right to bargain before it will be deemed to have waived its bargaining rights. Absent such manifestation by the union, an employer must not only give notice and an opportunity to bargain, but also *must refrain from implementation unless and until impasse is reached on negotiations as a whole*. [Emphasis added; footnotes omitted.] [305 NLRB at 786.]

As the parties here were far from an impasse in their negotiations as a whole at the time Respondent discontinued the DV benefits for the unit employees, I conclude that, by doing so, Respondent violated Section 8(a)(1) and (5), as alleged. Holding otherwise would encourage a collective-bargaining landscape littered with individual, time-constrained proposals to change this term or that and inhibit accord on complete collective-bargaining agreements.

2. The pay increases

The General Counsel contends that the April 1992 pay increases were put into effect before the Union was ever advised of the particular increase amounts. As the evidence establishes that these increases were in no way part of any automatic schedule established by some prior practice, the General Counsel argues Respondent violated the Act by unilaterally implementing the 1992 increases.

Respondent argues that ''the Union knew that a wage increase was proposed to occur 'automatically' by the 1st of April.'' Moreover, Respondent's argument continues, since the Union was informed at the February 20 meeting that the proposed increase was to be 50 cents per hour and, as the Union neither objected, protested, nor sought another meeting before April 1 to submit a counterproposal, Respondent was at liberty to implement the increases. This is so, Respondent contends, because ''the Union . . . avoided bargaining over the issue.''

I find that the April 1992 pay increase was in no sense automatic so that agreement by the Union prior to its implementation was unnecessary. On the contrary, the evidence establishes clearly that these wage adjustments were essentially designed to eliminate pay inequities and reward meritorious employees. Similarly, the increases were in no sense an across-the-board adjustment as suggested by Respondent's negotiators at the February 20 meeting. Even assuming that Darkey actually made an increase proposal at the February 20 meeting, the increases actually granted a month and a half later cannot be reasonably construed as an implementation of that proposal. Consequently, I find that the Union had no prior notice of the increases actually granted in April 1992 and, hence, no opportunity to bargain concerning those increases. Accordingly, I find Respondent violated Section 8(a)(1) and (5) of the Act, as alleged. *Goodman Holding Co*., supra.

3. The information issue

On this question, the General Counsel argues that information requested by the Union at the April 17 meeting concerning an accurate listing of the wage increases unilaterally granted by Respondent in April was presumtively relevant and the Respondent's delay for over 6 weeks in furnishing that information was unlawful. Respondent is silent on this issue.

A bargaining agent's right to wage information about unit employees ''cannot be seriously challenged.'' *Woodworkers v. NLRB*, 263 F.2d 483, 484 (D.C. Cir. 1959), and the cases cited at fn. 2. Respondent has advanced no justification for the delay in furnishing the accurate information concerning the April wage increases. In view of this fact, and as Respondent acted unilaterally with respect to those wage increases, I can perceive of no justification for Respondent's failure to timely furnish the requested information. This is especially true in light of the parties' interim bargaining session on May 22. Accordingly, I conclude that Respondent's delay in furnishing the Union with accurate information concerning the April 1992 wage increases violated Section 8(a)(1) and (5). *International Credit Service*, 240 NLRB 715, 718–719 (1979).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act which is the exclusive representative of the following appropriate unit of employees under Section 9(a) of the Act:

> All truck drivers and fuel men employed by Respondent; excluding all office clerical employees, dispatchers, heavy equipment operators, helpers, mechanics, welders, asphalt laborers, general laborers, guards and supervisors as defined in the Act.

3. By unilaterally terminating the dental and vision care insurance program applicable to unit employees after January 1992; unilaterally increasing the wage rates of unit employees in April 1992; and by failing to timely furnish the Union with accurate information concerning the April 1992 wage rate increases granted to unit employees, Respondent engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

4. The unfair labor practices found affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, it will be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Respondent will be required to reimburse unit employees for all losses they incurred by reason its discontinuance of the CCT dental and vision care insurance program after January 31, 1992, except to the extent that the CCT dental and vision care insurance program may have been interrupted from action taken solely by CCT. Such sums shall be computed in the manner set forth in *Ogle Protection Service*, 183 NLRB 682 (1970). Interest on all amounts owing will be paid in accordance with the formula set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Respondent's obligation to reimburse hereunder shall cease after it (1) secures reinstatement of the CCT dental and vision care insurance program, or the successor thereto, for unit employees and any applicable waiting periods thereunder expire; (2) reaches agreement with the Union for an alternate dental and vision care insurance program applicable to unit employees

and any applicable waiting periods thereunder expire; or (3) reaches an agreement with the Union to discontinue dental and vision care insurance benefits.

As the Union has already declined to request the recission of the wage increases granted in April 1992 no further opportunity to do so is deemed necessary. Accordingly, Respondent will be required to maintain the wage rate increases unlawfully granted in April 1992 until an agreement is reached with the Union concerning different rates of pay.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Bituminous Roadways of Colorado, Lakewood, Colorado, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Unilaterally discontinuing insurance benefits applicable to employees represented by the International Brotherhood of Teamsters, Local 13, AFL–CIO (Union).

(b) Unilaterally changing rates of pay for employees represented by the Union absent an agreement or waiver by the Union, or an bona fide impasse in negotiations for a collective-bargaining agreement.

(c) Failing to timely furnish the Union with information it requests which is necessary for it to discharge its function as the exclusive representative of Respondent's employees in the appropriate bargaining unit described below.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

> All truck drivers and fuel men employed by Respondent; excluding all office clerical employees, dispatchers, heavy equipment operators, helpers, mechanics, welders, asphalt laborers, general laborers, guards and supervisors as defined in the Act.

(b) Reimburse employees employed in the unit specified above in the manner specified in the remedy section of the administrative law judge's decision in Case 27–CA–12224 for all losses they incurred by reason of Respondent's discontinuance, on or after January 31, 1992, of the dental and vision care insurance program applicable to them.

(c) Post at its Lakewood, Colorado place of business copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 27 after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes. All pending motions inconsistent with this Order are denied.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain, on request with International Brotherhood of Teamsters, Local 13, AFL–CIO (Union) as the exclusive representative of our employees employed in the following appropriate unit:

> All truck drivers and fuel men; excluding all office clerical employees, dispatchers, heavy equipment operators, helpers, mechanics, welders, asphalt laborers, general laborers, guards and supervisors as defined in the Act.

WE WILL NOT discontinue insurance benefits nor alter wage rates for employees in the above unit without the prior agreement or waiver by the Union, or a bona fide impasse in negotiations for a collective-bargaining agreement.

WE WILL NOT fail to timely furnish the Union with information necessary to perform its function as the exclusive bargaining representative for the employees in the above unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reimburse employees employed in the above unit for all losses suffered by reason of our discontinuance to the dental and vision care insurance program on and after January 31, 1992, together with interest on the sums.

BITUMINOUS ROADWAYS OF COLORADO